PREAMBLE TO LOS ANGELES CITY ORDINANCE NO. 151,294

An ordinance amending Chapter 1, Article 2 of the Los Angeles Municipal Code to add Section 12.70, Adult Entertainment Zoning, in order to regulate adult entertainment businesses, as defined therein, in the City of Los Angeles.

WHEREAS, in recent years there has been a growing concern on the part of public officials and residents of the City of Los Angeles regarding the appearance of a blighting and degrading effect upon certain neighborhoods of the City from the concentration of sex-oriented, adult entertainment businesses in such neighborhoods; and

WHEREAS, based upon said concern, the Los Angeles City Council instructed the City Planning Department on January 12, 1977, to conduct a comprehensive study, with the assistance of the Police Department, City Attorney and other appropriate City agencies, to determine whether and to what extent the concentration of such adult entertainment businesses has a blighting and degrading effect upon the neighborhoods in which they are situated; and

WHEREAS, the findings of the above-mentioned study, which included testimony from public hearings, indicated that the concentration of such adult entertainment businesses tends to result in the blighting and degrading of the areas of such concentration; and

WHEREAS, in order to prevent the further concentration of such adult entertainment businesses and to protect the character of the City's neighborhoods, the City Council enacted a zoning moratorium on August 9, 1977, as an urgency ordinance, temporarily prohibiting the establishment of an adult entertainment business, as

defined therein, within 1,000 feet of another such business or within 500 feet of any church, school, park, playground or area zoned for residential use; and

WHEREAS, in order to allow sufficient time for additional study of this matter and the preparation of a permanent adult entertainment zoning ordinance, the Council directed on November 23, 1977, that said zoning moratorium shall be in effect until August 11, 1978, or until such time as said permanent adult entertainment zoning ordinance has been enacted, whichever first occurs; and

WHEREAS, it is a compelling interest of the City of Los Angeles that a permanent adult entertainment zoning ordinance be enacted in order to preserve the public health, peace, safety and general welfare by regulating adult entertainment businesses in such a manner as to prevent their further concentration and the continued erosion of the character of affected neighborhoods of the City;

NOW THEREFORE:

THE PEOPLE OF THE CITY OF LOS ANGELES

DO ORDAIN AS FOLLOWS:

Section 1. Section 12.70 is hereby added to the Los Angeles Municipal Code, . . .

LOS ANGELES MUNICIPAL CODE

SEC. 12.70. ADULT ENTERTAINMENT ZONING. (Added by Ord. No. 151,294, Eff. 9/1/78.)

A. PURPOSE. It is the purpose and object of this section to establish reasonable and uniform regulations to prevent the continued concentration of adult entertainment businesses, as defined herein, within the City of Los Angeles.

B. DEFINITIONS. For the purpose of this section, certain terms and words are defined as follows:

1. "Adult Arcade" — An establishment where, for any form of consideration, one or more motion picture projectors, slide projectors or similar machines, for viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

2. "Adult Bookstores" — An establishment which has as a substantial portion of its stock-in-trade and offers for sale for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas;" or

(b) Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

3. "Adult Cabaret" — A nightclub, bar, restaurant or similar establishment which regularly features live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities," or films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

4. "Adult Motel" — A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

5. "Adult Motion Picture Theatre" — An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

6. "Adult Theatre" — A theater concert hall, auditorium or similar establishment which, for any form of consideration, regularly features live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

7. "Establishment" (Amended by Ord. No. 157,538. Eff. 5/13/83.) — As used in Subsection C

hereof, the "establishment" of an adult entertainment business shall mean and include any of the following:

(a) The opening or commencement of any such business as a new business;

(b) The conversion of an existing business, whether or not an adult entertainment business, to any of the adult entertainment businesses defined herein; *or*

(c) The relocation of any such business.

8. "Massage Parlor" — An establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the State of California. This definition does not include an athletic club, health club, school, gymnasium, state licensed cosmetology or barber establishment, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service. (Amended by Ord. No. 155,718, Eff. 8/6/81.)

9. "Public Park" — A park, playground, swimming pool, beach, pier, reservoir, golf course or similar athletic field within the City of Los Angeles which is under the control, operation or management of the City Board of Recreation and Park Commissioners or the County Department of Beaches.

10. "Religious Institution" — A building which is used primarily for religious worship and related religious activities.

11. "School" — An institution of learning for minors, whether public or private which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school or any special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

12. "Sexual Encounter Establishment" — An establishment, other than a hotel, motel or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate or consort in connection with "specified sexual activities" or the exposure of "specified anatomical areas." This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State of California engages in sexual therapy.

13. "Specified Anatomical Areas" — As used herein, "specified anatomical areas" shall mean and include any of the following:

(a) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolas; or

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

14. "Specified Sexual Activities" — As used herein, "specified sexual activities" shall mean and include any of the following:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;

(b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;

(c) Masturbation, actual or simulated; or

(d) Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

15. "Substantial Enlargement" — As used in Subsection C hereof, the "substantial enlargement" of an adult entertainment business shall mean the increase in floor area occupied by the business by more than fifty percent (50%), as such floor area exists on the effective date of this section.

16. "Transfer of Ownership or Control" — As used in Subsections C and E hereof, the "transfer of ownership or control" of an adult entertainment business shall mean and include any of the following:

(a) The sale, lease or sublease of such business;

(b) The transfer of securities which constitute a controlling interest in such business, whether by sale, exchange or similar means; or

(c) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of such business, except for transfer by bequest or other operation of law upon the death of the person possessing such ownership or control.

17. "Adult Entertainment Business" — Adult Arcade, Adult Bookstore, Adult Cabaret, Adult

Motel, Adult Motion Picture Theatre, Adult Theatre, Massage Parlor, or Sexual Encounter Establishment, as defined herein, and each shall constitute a separate adult entertainment business even if operated in conjunction with another adult entertainment business at the same establishment. (Added by Ord. No. 157,538, Eff. 5/13/83.)

C. Prohibition. (Amended by Ord. No. 158,579, Eff. 1/23/84.) No person shall cause or permit the establishment, substantial enlargement or transfer of ownership or control of an adult entertainment business within 1,000 feet of another adult entertainment business, or within 500 feet of a religious institution, school, or public park within the City of Los Angeles. No person shall cause or permit the establishment or maintenance of more than one adult entertainment business in the same building structure or portion thereof, or the increase of floor area of any adult entertainment business in any building, structure or portion thereof containing another adult entertainment business.

No person shall cause or permit the establishment, or substantial enlargement, of an adult entertainment business within 500 feet of any lot in an "A" or "R" zone, or within the "CR", "C1", or "C1.5" zones in the City of Los Angeles.

After March 6, 1988, no person shall cause or permit the continued operation, maintenance, or use of a lot, building or structure, or any portion thereof as an Adult Arcade, Adult Bookstore, Adult Cabaret, Adult Motel, Adult Motion Picture Theater, Adult Theater, Massage Parlor or Sexual Encounter Establishment, within 500 feet of any lot in an "A" zone or "R" zone, or within the "CR", "C1", or "C1.5" zones in the City of Los Angeles. (Added by Ord. No. 161,111, Eff. 5/18/86.)

D. MEASUREMENT OF DISTANCE. The distance between any two adult entertainment businesses shall be

measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any adult entertainment business and any religious institution, school or public park shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment business to the closest property line of the religious institution, school or public park.

E. EXCEPTIONS.

1. A person possessing ownership or control of an adult entertainment business which is within 1,000 feet of another such business or within 500 feet of any religious institution, school or public park on the effective date of this ordinance shall be permitted to transfer such ownership or control within two (2) years of said effective date. The person acquiring such ownership or control, however, shall be required to discontinue said adult entertainment business within five (5) years from the date of said transfer of ownership or control, if such business continues to be within 1,000 feet of another such business or within 500 feet of any religious institution, school or public park.

2. A person possessing ownership or control of an adult entertainment business shall be permitted to transfer such ownership or control if such business is not within 500 feet of any religious institution, school or public park and the only other adult entertainment business or businesses within 1,000 feet of such business have been established under a variance from the requirements of this section, pursuant to the variance provisions set forth in Section 12.27 of this Code. This exception shall not, however, apply to an adult entertainment

business which has been established under such a variance.

3. Except for an adult entertainment business required to be discontinued pursuant to Subdivision 1 of this Subsection, if more than one adult entertainment businesses [*sic*] exists in the same building, structure or portion thereof, then all may be continued until March 10, 1985. At that time all shall be discontinued except those established prior to September 1, 1978; but if none of the adult entertainment businesses were established prior to September 1, 1978, then all shall be discontinued except for one, and in case of a dispute the adult entertainment business established first shall have the priority right to continue.

F. SEVERABILITY. If any provision or clause of this section or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other section provisions, clauses or applications thereof which can be implemented without the invalid provision, clause or application thereof, and to this end the provisions and clauses of this section are declared to be severable.

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20. Adult Entertainment Businesses. (Amended by Ordinance No. 161,111, Eff. 5/18/86.)

(a) Exceptions from Section 12.70-C.

(i) A person may establish and maintain, or continue to operate, an adult entertainment business on a lot within 500 feet of an "A" or "R" Zone, or within the "CR," "C1" or "C1.5" zones, if a site consistent with Section 12.70-C is not reasonably available elsewhere in the City for the establishment or relocation of the subject adult entertainment business. This exception shall only apply to an adult entertainment business which is otherwise in compliance with all other provisions of this chapter including Section 12.70-C.

A site is "reasonably available" elsewhere in the City if it meets all of the following criteria:

(1) its use as the proposed adult entertainment business is consistent with all applicable zoning regulations, including Section 12.70-C.

(2) it is available for use, purchase or rental as an adult entertainment business.

(3) it has adequate street access, street lighting and sidewalks.

(4) it is at least 500 feet away from any uses which are or may become obnoxious or offensive by reason of emission of odor, dust, smoke, noise, gas, fumes, cinders, refuse matter or water-carried waste.

This exception shall not apply to massage parlors or sexual encounter establishments.

(ii) An application for an exception shall be filed in the Office of Zoning Administration upon a form

prescribed for that purpose, identifying the present or proposed location of the subject adult entertainment business, and accompanied by data supporting the proposed exception, and the fee provided for in Section 19.01-N of this Code.

The procedures described in Section 12.24-C,3 shall be followed to the extent applicable. However, a hearing shall be held and decision made within 60 days from the date of filing of an application. This time limit may be extended by mutual written consent of the applicant and Zoning Administrator then having jurisdiction of the matter. An exception shall be approved if it meets the requirements of subparagraph (i) above.

An appeal from the determination of the Zoning Administrator on whether a proposed exception meets the requirements of subparagraph (i), may be taken to the Board and Council in the same manner as prescribed in Section 12.28 for appeals from the Conditional Uses enumerated in Section 12.24-C,1.1. However, a decision on any appeal shall be made within 30 days of the expiration of the appeal period. This time limit may be extended by mutual written consent of the applicant and the Board or Council, whichever then has jurisdiction of the appeal.

If the Zoning Administrator, Board or Council disapproves an exception then it shall make findings of fact showing wherein a site consistent with Section 12.70-C is reasonably available elsewhere in the City for establishment or relocation of the subject adult entertainment business.

(b) Extensions of the Section 12.70-C Amortization Period.

(i) An adult entertainment business existing on March 6, 1986 and operating within 500 feet of a lot in an "A" Zone or "R" Zone or, within the "CR," "C1," or "C1.5" zones may be continued, as specified below:

(1) If the adult entertainment business is otherwise in compliance with all other provisions of this chapter including Section 12.70-C; and

(2) If the adult entertainment business is subject to a written lease, entered into prior to March 6, 1986, with a termination date extending beyond March 6, 1988, then the adult entertainment business may continue until the expiration of the present term of the lease but no later than March 6, 1991; or

(3) If the adult entertainment business involves the investment of money in real property, improvements or stock in trade such that a termination date beyond March 6, 1988 is necessary to prevent undue financial hardship, then it may be continued until March 6, 1991.

(ii) An application for an extension of time shall be filed in the Office of Zoning Administration upon a form prescribed for that purpose, identifying the present location of the subject adult entertainment business, and accompanied by data supporting the exception request, and the fee provided for in Section 19.01-N of this Code. An extension shall be approved if it meets the requirements of subparagraph (i) above.

The procedures described in Section 12.24-C,3 shall be followed to the extent applicable. However, a hearing shall be held and decision made within 60 days from the date of filing. This time limit may be extended by mutual written consent of the applicant and the Zoning Administrator then having jurisdiction of the matter.

An appeal from the determination of the Zoning Administrator on whether a proposed extension meets the requirements of Subparagraph (i), may be taken to the Board and Council in the same manner as prescribed in Section 12.28 for appeals from the Conditional Uses enumerated in Section 12.24-C,1.1. However, a decision

on any appeal shall be made within 30 days of the expiration of the appeal period. This time limit may be extended by mutual written consent of the applicant and the Board or Council, whichever then has jurisdiction over the appeal. If the Zoning Administrator, Board or Council disapproves a proposed extension then it shall make findings of fact showing wherein the proposed extension fails to meet the requirements of Subparagraph (i).